

]

STATEMENT

THEODORE C. SORENSEN

DIRECTOR-DESIGNATE OF CENTRAL INTELLIGENCE

BEFORE

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE

17 JANUARY 1977

EXECUTIVE SECRETARY
D.C.I. [Signature]

Mr. Chairman, Members of the Committee:

I am grateful for this opportunity to share with you my views on President-Elect Carter's decision to nominate me for the post of Director of Central Intelligence.

I did not lightly accept this assignment, and some of my friends have suggested that anyone agreeing to take the job lacks either the sanity or the common sense necessary to fulfill it. I recognize that the successes of the Intelligence Community, including the CIA, remain largely unknown while its errors are roundly assailed; that it is often accused, both at home and abroad, of deeds that it never committed or that it undertook at the insistence of higher authority; and that the Agency and its employees are often unable to defend themselves publicly against these attacks.

But I accepted this assignment because I regard the intelligence process as second to none in its importance to our national security. This country cannot properly evaluate either the threat of war or the prospects for peace, either the strategic weapons systems it needs or the strategic arms limitations it can accept and monitor, without reliable foreign intelligence. In world affairs, knowledge is power; and this country can be secure only if it knows what is going on in other countries, most of which have societies far less open than our own. To strengthen our intelligence agencies, to maintain and improve their effectiveness in this new era of public

accountability, to provide to President Carter and his policy-makers the objective intelligence estimates needed to build the more peaceful world for which he has called, all this represents a challenge which I could not refuse.

I was raised in Nebraska as the son of second-generation Americans who taught their children to love this country and to participate in a never-ending effort to protect and improve it. After graduation from the University of Nebraska College of Law in 1951, I spent nearly 13 years here in Federal Government, a period of service that was capped by 3 years as Special Counsel to President Kennedy.

I do not want to exaggerate my foreign policy experience in that job. After the Bay of Pigs fiasco of 1961, about which I knew nothing whatsoever in advance, the President asked me to attend National Security Council meetings as an observer; and in that capacity I received each day the reports and estimates of the Central Intelligence Agency. The President also requested my participation in various crisis management sessions, including most notably the Executive Committee of the National Security Council during the Cuban Missile Crisis of 1962. (At no time, let me add, did I know of any plots to assassinate foreign leaders or subvert foreign governments, nor was I privy to any discussions or decisions concerning CIA covert activities.)

Three months after President Kennedy's death, I left the White House, first to write a book and then to engage in the practice of law in the New York firm of Paul, Weiss, Rifkind, Wharton and Garrison. The bulk of my practice has been in the international arena, involving negotiations with the leaders of dozens of countries around the world, particularly in Latin America, Africa, the Middle East and Eastern Europe. On brief occasions I represented the Governments of Iran, Zaire, Sierra Leone and Newfoundland in commercial disputes or negotiations. In no country did I have any connection with or first-hand knowledge of any activities of either their intelligence agencies or our own, nor do I have now any obligations or prejudices regarding any foreign country which would interfere with my new duties.

During this period I wrote extensively on international questions for Foreign Affairs, the Saturday Review, the New York Times and others; and I was also invited to deliver lectures in several countries, including New Zealand, Israel, West Germany, England, Ireland, all four Scandinavian countries and the Soviet Union. I do not believe that anyone who heard the lecture I delivered to Moscow's Institute of the United States could doubt for one moment my rejection of communism and all that it represents. Believe me, Mr. Chairman, my observations of all kinds of systems and my travels in all kinds of countries has served continually to increase the depth of my devotion to our own nation and to its system of government. I might add that the Ford White House invited me down last year to consult with me on changes that should be made in the conduct of foreign intelligence by our government.

With that brief sketch of my background, allow me now to outline what kind of Director of Central Intelligence I believe is needed at this particular time, the kind I would, if confirmed, strive with your help to become.

First, the next Director should be an individual well known to and completely trusted by the new President. Only in this way can the Director have the direct and continuous access to the President that is essential to his role as the President's principal foreign intelligence adviser. Only in this way can he report to the President the hard, unvarnished facts produced by an independent intelligence process, and report them whether or not the President wants to hear these facts. Only in this way can the members of the Intelligence Community feel certain that their final product is getting through to their principal customer and only in this way can the Director refuse to take orders from the White House or elsewhere that he regards as unlawful or improper, whether they involve the undertaking of wrongful covert operations, the altering of intelligence conclusions, the yielding of necessary functions, or the concealment either from or by the Director of information that should not be so concealed. President-Elect Carter has generously expressed that kind of faith in me; he has promised me that kind of access; he has promised to accept whatever unpleasant facts I bring him; and I have in turn promised to know all there is to know about the activities of my subordinates and to make certain he knows as well.

Second, the next Director should be an individual who can continue the restoration of public trust and support that the Central Intelligence Agency needs to succeed. If the American people lack confidence that the Agency serves their interests and obeys their laws, if they ever again believe that it is merely the personal instrument of the President, unaccountable to the Congress, then that Agency will be unable to obtain either the talent, or the funding, or the period of relative calm needed to carry out its work. In order to reach this goal of public trust at a time of general distrust, there may be some merit in adopting the Murphy Commission's recommendation that the Director be an "outsider" who is free from personal and departmental ties to the Agency. Nor is it inappropriate that the Director be a lawyer, sensitive to the rights of Americans at home and abroad. It is President-Elect Carter's hope that many of today's critics of the CIA will feel over time somewhat assured that the Agency under my leadership will not return to improper domestic activities, political assassination plots, unlawful mail openings and other abuses of the past; and that covert operations, while not being abolished, will go forward only in extraordinary circumstances, and only after having been reviewed by senior Cabinet officials, including the Attorney General, and authorized in writing by the President upon his determination that the operation is justified by important national security interests. Further, scrupulous

attention must and will be paid to the requirement, imposed by law, that the appropriate Congressional committees be informed about such operations in a timely manner. It is also essential to reexamine such operations periodically to make certain that they are still productive, still justifiable, and still within the bounds of American law. It would be my hope through such an approach to help repair some of the damage that has been done to the good name of both the USA and the CIA.

Third, the next Director of Central Intelligence must have the degree of intellect and independence required to protect the integrity of the intelligence process. Whatever you may think of any particular Director's views on policy, his job is not to make policy but to oversee the collection, processing, analysis and delivery of foreign intelligence. If he permits outside pressures and politics to influence the results of that process, if conclusions are altered to fit the policies of the President or the wishes of the Secretary of State or the programs of the Secretary of Defense or the preconceptions of the Congress or even the previous findings of the CIA or the prejudices of its Director, then the results are no longer intelligence but propaganda. Intelligence analysts, of course, cannot be so shut off from the real world that they lose touch with the raw data; they must utilize human intelligence sources where technology cannot discern a government's intentions; and they must draw upon military,

diplomatic, scholarly and other experts both inside and outside of government. But the final product, containing dissents from those who disagree, should be neither a watered-down compromise nor a reflection of institutional bias, but the most objective, accurate, reliable intelligence estimate possible, delivered in time and in a form that will make it both relevant and readable to the President and National Security Council. I would hope that my experience as a lawyer, writer and White House counsel would stand me in good stead in striving to maintain that kind of standard; for intelligence reports which are unread or unreliable or irrelevant are simply a waste of precious money, manpower and brilliant technology. Director Bush has faithfully prevented any hint of partisan political bias in the intelligence analyses and estimates issued during his tenure; and I can assure this Committee that I intend to adhere to that standard and, also like George Bush, renounce all political activity and electoral ambitions while serving in this sensitive post.

Fourth and finally, the next Director of the CIA must be able to lead that Agency into this new era of accountability without subjecting it to further demoralizing disruptions. If confirmed, I will be the fifth Director in little more than four years. The Agency has been through a series of investigations, reorganizations, reductions in force and reshuffling of top personnel. The creativity

of the analytical mind--and I have found the intellectual quality at Langley to be of the very highest--now needs a period of relative stability. For that reason, I have assured President-Elect Carter of my intention to serve a full four years if confirmed; I have recommended to him that Deputy Director Hank Knoche, Admiral Dan Murphy and the other top professionals with whom I am much impressed be continued in their present positions; and I have further recommended that no drastic reorganizations be undertaken at this time.

This is not to say that the effort to improve the intelligence process and adapt it to today's world is not a continuing one. We need to place our emphasis on improving the quality and timeliness of the analytical product in order to match the increasing flow of technical collections. We must keep abreast of the constantly increasing need for new intelligence on economics and energy, Third World developments, international terrorism, nuclear proliferation and a new generation of world leaders. We must maintain, as earlier indicated, vigilant safeguards against abuse to make certain that we do not oppose our adversaries by adopting their methods or philosophy.

Above all, the Intelligence Community must in this next four year period as in no previous four year period achieve the goal of true democratic accountability by working closely with the Congress and this Committee. I pledge, if confirmed, to keep this Committee

and the other appropriate committees of Congress fully informed on a timely basis with respect to intelligence activities of every kind, not merely covert operations. I promise you complete truthfulness in all appearances before you, without playing games if information is restricted and without waiting for you to ask precisely the right question. I also look forward to working closely with you in developing a stronger and more suitable statutory charter for all U.S. foreign intelligence activities.

Leadership of the Intelligence Community in all these areas does not, in my opinion, require that the Director be an experienced manager. Under Executive Order 11905, the day-to-day management of the CIA is delegated to the Deputy Director. The Director should be, in effect, the Chairman of the Board, not the Chief Operating Officer. He should set priorities, demand performance, insure compliance, draw upon and coordinate the machinery of the Intelligence Community and represent it with the President, the National Security Council and Cabinet, the Congress and the general public. Although I have much to learn and will count on this Committee helping me to learn it, I sincerely believe that my previous government and legal experience will enable me to fulfill these responsibilities.

Before concluding, Mr. Chairman, I owe this Committee an answer to two questions which have been raised concerning my fitness for this particular post.

First, questions have been raised about affidavits that I submitted in the New York Times and Daniel Ellsberg cases involving the publication of the so-called Pentagon Papers. In those affidavits I stated my belief at that time that the Executive Branch frequently and routinely overclassified documents, and kept them classified long after there was any arguable national security interest or legitimate secret to protect. I further noted that it was common practice in Washington for Government officials to take such documents home for review, and that it was not uncommon for such officials to leak classified information selectively to the press. On more than one occasion I was directed by President Kennedy to do so myself. So far as the Pentagon Papers themselves were concerned, I further noted that information of incomparably greater importance to the national defense had been leaked to the press, and that no criminal prosecutions had ensued. I also recognized in these affidavits, let me emphasize, a true need for secrecy in the conduct of government in certain circumstances, including those relating to military personnel, confidential foreign government communications, and candid reports and advice to the President on governmental and military affairs.

Having last week reviewed these affidavits for the first time in several years, I find considerable fault with their wording, although I believe they were factually accurate; and I make no apology for standing by the general principle of greater Executive

Branch disclosure to the Congress and public. But as Director of Central Intelligence, I can assure you that my views and practices would be consistent with the perspectives of that office, with my oath as Director, and with my statutory obligation to insure the effectiveness of our intelligence activity by protecting all sources and methods. I might add, however, that a sensitivity to the dangers of over-classification, and a demonstrated regard for the rights of the public and Congress to be informed, are not in my judgment disqualifications for that office.

I also stated in my affidavits that various classified papers were among the documents that I removed from the White House at the conclusion of my service in February 1964, and I explained that I had simply followed a long-standing practice among White House officials in this regard. That practice was based not only on custom but also on the legislative histories of the Presidential Libraries Act of 1955 and the Federal Property and Administrative Services Act of 1949. As explained to me by GSA at that time, there was unquestioned acceptance of the proposition that White House papers belonged to its occupants when their terms of service ended.

The essential facts respecting the removal of my own papers from the White House, and my subsequent use of those papers, were as follows: Following President Kennedy's death, the GSA arranged

for my files to be removed to its National Archives depository in the Boston area, and for me to select therefrom those papers, including classified papers, that were necessary for the preparation of my book. These selected papers were kept safely in my home, not circulated to others, returned upon completion of my book to GSA, and ultimately donated with all the rest of my White House files to the Kennedy Library. To the best of my recollection, no communications intelligence or documents of a similar classification were included in these papers. No information that I considered classified was reproduced in my manuscript, although I drew on such information for background and context. I took the additional precaution of submitting my manuscript for review and clearance to individuals who were then serving or had previously served in high national security positions in government. To the best of my knowledge, no one has ever suggested that my book revealed any national secrets or disclosed any classified information.

The second matter upon which I owe this Committee a full answer concerns my draft status. The facts are that I registered for the draft upon becoming 18 years of age in 1946, and shortly thereafter expressed the philosophy of non-violence with which I had been reared by two deeply idealistic parents by requesting, not an avoidance of military duty, not an avoidance of hazardous duty, but military service in a non-combatant capacity--preferring, by way of illustration, to serve on the battlefield as a medical corpsman saving lives instead of taking lives. My action was largely

symbolic, inasmuch as our country was not then at war or expected to go to war; nor did I ever see military service, having been ineligible during the Korean War first for physical and then for family reasons. As previously noted, however, I did serve in the U.S. Government as a civilian from 1951-1964, including participation on the National Security Council's Executive Committee during the Cuban Missile Crisis of 1962; and at no time did I or, to the best of my knowledge, any of my colleagues ever feel that my personal preference for non-violence inhibited in any way my advice to the President on his choice of military or other options.

As Director of Central Intelligence, my principal role would be to provide intelligence to the policymakers who are considering the military and diplomatic alternatives available to the United States. I would never have accepted this nomination were I not determined to strengthen our country in every way appropriate to my position and to implement all lawful orders and policies of the President, whatever that may involve, without permitting my private religious and philosophical beliefs to intrude into public policy. I doubt that this qualifies me today for the label of conscientious objector; but I earnestly hope that I will be a conscientious Director of Central Intelligence.

Thank you for this opportunity to set the record straight.

Approved For Release 2004/03/11 : CIA-RDP80M00165A002600080011

EXECUTIVE SECRETARIAT

Routing Slip

Executive Registry

92-191

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	D/DCI/IC				
4	DDS&T				
5	DDI				
6	DDA				
7	DDO				
8	D/DCI/NI				
9	GC				
10	LC				
11	IG				
12	Compt				
13	D/Pers				
14	D/S				
15	DTR				
16	Asst/DCI				
17	AO/DCI				
18	C/IPS				
19	DCI/SS				
20	D/EE0				
21					
22					
SUSPENSE		Date			

Remarks:

These were sent to the Senate Committee
but not circulated because of the decision
to withdraw.

Executive Secretary

Approved For Release 2004/03/11 : CIA-RDP80M00165A002600080011-7

STATEMENT

THEODORE C. SORENSEN

DIRECTOR-DESIGNATE OF CENTRAL INTELLIGENCE

BEFORE

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE

17 JANUARY 1977

Mr. Chairman, Members of the Committee:

I am grateful for this opportunity to share with you my views on President-elect Carter's decision to nominate me for the post of Director of Central Intelligence, and to answer the scurrilous and unfounded personal attacks which have been anonymously circulated against me.

I did not seek or lightly accept this assignment, and some of my friends have suggested that anyone agreeing to take the job lacks either the sanity or the judgment necessary to fulfill it. I recognize that the successes of the Intelligence Community are largely unspoken while its errors are roundly assailed; that it is often accused of deeds that it never committed or that it undertook at the request of higher authority; and that the Agency and its employees are rarely able to defend themselves publicly against these attacks. In recent days, I have had the same experience.

But I do not intend to be intimidated by those who wish to strike at me, or through me at Governor Carter, by personal attacks on my integrity and probity, grossly distorting the facts and maliciously twisting my words. I prize both my country and my honor too greatly to desert this post under that kind of cloud; and I am here to appeal to the sense of fairness of the Members of this Committee.

I recognize that some of you have legitimate questions concerning my qualifications. But before dealing with those questions, I must as a matter of personal privilege respond to the personal attacks upon my character which my nomination has suddenly stirred.

1. First, it has been said that I leaked or otherwise conveyed classified information for political or personal purposes. That charge is totally false. In the White House, I drew upon classified materials in backgrounding the press only when I was specifically directed to do so by the President, who clearly had such authority; and I took documents home for review only in those rare instances when I would otherwise have spent 24 hours a day in that office.

I have never compromised the national security of this country, or approved of anyone else doing so. My affidavits in the lawsuits brought against the New York Times and Daniel Ellsberg regarding publication of the Pentagon Papers accurately described the practices then prevalent in Washington -- not as they should have been but as they were. Almost identical affidavits were submitted by a former Assistant Secretary of State, a former State Department Legal Adviser and a former Ambassador. During my White House service I received the highest security clearances from the CIA; and I received them again in the last few weeks. I have something of a reputation for guarding secrets, whether they be those of my government, my clients, or my friends. No one has ever charged me with conveying classified information to others or mislaying classified materials.

2. Second, it has been said that I improperly took classified documents with me from the White House when I left government service, improperly used them in writing my book on President Kennedy, and improperly obtained a tax deduction for donating them to the John F. Kennedy

Library. Those charges are totally false. Upon the announcement in early 1964 that I was leaving the White House, I was visited by the Assistant Archivist of the United States, an official in the General Services Administration. He informed me that the papers in my files that I had created and accumulated during the period of my service in the White House were regarded by both law and historical precedent as my personal property; and further, that I was entitled to make any use of those papers that I deemed appropriate, whether selling them as some former White House aides had done, writing books based on them as other former aides had done, or donating them to an appropriate educational institution -- with a tax deduction on the value of the gift -- as still others had done.

Upon my signing on February 14, 1964, a Letter of Intent to donate my papers to the Kennedy Library, the Archivist's Office sorted and packed my files, presumably leaving behind anything that was not mine, transferred them to a GSA depository in the Boston area. The GSA then sent to my home certain of those papers which I had selected as necessary background materials for my book. It collected them from me upon completion of my manuscript, and the entire lot of my papers was then transmitted to the John F. Kennedy Library, to which I donated them.

Naturally there were classified papers among them (although no communications intelligence reports), just as there were classified documents among the papers taken upon their departure from the White House by the principal aides of every President at least since Woodrow Wilson, including Col. House, Samuel Rosenman, Harry Hopkins, Sherman Adams,

McGeorge Bundy and many, many others. Like most of those named, I reviewed my papers, including classified papers, in preparing a book on my experiences, just as Gerald Ford at his confirmation hearing acknowledged drawing upon Top Secret documents in his possession when writing his book on the Warren Commission. In the decade since my book was published, no one has suggested that security was in any way breached by anything in my book, and it was in fact submitted for clearance in advance to the National Security Adviser to the President, to his former deputy, and to the former Deputy Secretary of Defense. My handling of classified information was at all times in accordance with the then-existing laws, regulations and practices.

Upon donating my papers to the Kennedy Library (instead of selling them individually for a far larger amount), I received the tax deduction to which I was entitled by law, just as many former government officials did over the years -- including, in addition to some or all of those already mentioned, former Ambassador Galbraith, former White House aide Arthur Schlesinger, and former Governor and Ambassador Adlai Stevenson.

No doubt arguments can be made against the practice begun by George Washington of White House occupants taking their papers with them -- John Eisenhower has recently stated, for example, that his father inherited from Truman and left to Kennedy no papers other than the instructions on nuclear attack procedures -- but at the time I took my papers in 1964, that was clearly the accepted view of the law.

No doubt arguments can also be made against permitting tax deductions on the donation of papers by former government officials -- and such arguments were made when the law was changed in 1969 -- but that was nevertheless the law prior to that time.

All of the above actions were taken with the full knowledge and approval of the government, and were publicly described in the well-publicized affidavits which I filed in the New York Times case and subsequently in the Ellsberg case. Those two cases involved important First Amendment issues, including the public's right to know the tragic history of the Vietnam War. Whatever improvements might have been made in the wording of my affidavits, I make no apology for having responded to the requests of counsel in both cases to attest to the inconsistencies and anomalies of government classification practices.

3. Third, it has been said that I avoided military service as a pacifist during World War II and the Korean War. This charge is totally false. I have never sought to avoid military service, hazardous or otherwise, in wartime or any other time. I have never advocated for the United States a policy of pacifism, non-resistance to attack or unilateral disarmament. The facts are that I registered for the draft upon becoming 18 years of age in 1946, a year after World War II ended, and shortly thereafter expressed the philosophy of non-violence with which I had been reared by two deeply idealistic parents by requesting, not an avoidance of military duty or hazardous duty, but military service in a non-combatant capacity (classification IAO) --

preferring, by way of illustration, to serve on the battlefield as a medical corpsman saving lives instead of taking lives. This status was granted. My action was largely symbolic, inasmuch as our country was not then at war or expected to go to war. I have never, in my service on the Executive Committee of the National Security Council during the Cuban Missile Crisis or at any other time, permitted my preference for personal non-violence to inhibit in any way my advice to the President on the military and other options available as a matter of national policy. I would not have accepted Governor Carter's designation to be Director of Central Intelligence were I not prepared to carry out every lawful order of the President conceivably connected with this post.

4. Fourth, it has been said that my legal representation of multinational corporations and foreign governments poses a conflict of interest in undertaking this assignment. This charge is patently absurd. Over the years, the highest national security officials in our country have frequently represented such clients before taking office -- including Messrs. Dulles, Acheson, Rogers, McCloy, Stevenson and a host of others -- but no one challenged their right to serve or later claimed that their actions were prejudiced by those earlier ties. My only representations of foreign governments were the brief occasions on which I represented the Governments of Iran, Zaire, Sierra Leone and Newfoundland in commercial disputes or negotiations. In no country did I have any connection with or first-hand knowledge of any activities of either their intelligence agencies

or our own; nor do I have now any obligations or prejudices regarding any foreign country which would interfere with any official duties.

5. The fifth and final charge is the suggestion that I must have been somehow involved in Kennedy White House plots to assassinate foreign leaders. That charge is totally false. I have previously testified under oath, and I do so again today, that I knew nothing of such plots; and no one who did has ever stated or ever could state, nor did your predecessor committee find or suggest, that I was informed or involved in any way. The record is equally clear that I had no advance knowledge or involvement of any kind in the Bay of Pigs or in any CIA covert operations.

Mr. Chairman, far more than any job or title, I value my good name. I resent this reckless scattering of baseless personal accusations in order to suppress a different point of view. I respectfully ask this Committee, whatever the fate of my nomination, to consider the evidence submitted today and previously submitted to your staff, and to make it clear that these personal charges are wholly false and without foundation and not the basis for the Committee's view of my nomination.

With these personal charges out of the way, we can turn now to the question of my qualifications -- to legitimate questions raised by those with whom I respectfully disagree but who are entitled to raise what they regard as valid questions. There are basically two such questions:

First is the question of my experience in intelligence. I was an observer at National Security Council meetings and a reader of intelligence reports in the White House, and worked closely with the CIA and other national security officials during the Cuban Missile Crisis. I have since leaving the White House written and lectured widely on international affairs, and engaged in negotiations with dozens if not hundreds of top foreign officials. I was requested by the Ford White House a year ago to provide advice and consultation on its reorganization of the intelligence effort. My qualifications for this post have been endorsed by John McCone, Clark Clifford, Averell Harriman, Admiral Elmo Zumwalt, General James Gavin, and others who know of my work. Most importantly, I was chosen by the President-elect as someone sufficiently in his personal trust and confidence to bring him the hard unvarnished facts, and to reject any improper orders whatever their source; as someone who possessed the integrity necessary to continue the task of restoring public trust and confidence in the CIA, and earning that trust and confidence by keeping the Agency accountable and free of abuse; and as someone with the degree of intellect and independence required to protect the integrity of the intelligence process from outside pressures and politics.

But I recognize that there are those, inside and outside of the intelligence establishment, who disagree with the Murphy Commission recommendation that an outsider always be named to this post; who refuse to recognize the totally non-partisan leadership provided

by George Bush despite earlier concerns about his partisan background; or who see no value for this post in a lawyer's sensitivities to civil liberties and lawful conduct. These people believe that only someone from inside the military or intelligence establishment has the experience necessary for this job. I disagree.

Second is the question of my views. Although as previously indicated I am not a pacifist, I do favor a foreign policy that prefers where possible the risks of peace to the risks of war. Although as previously indicated I fully recognize the need for legitimate government secrecy, which is in fact weakened by overclassification, I do believe in the right of the Congress and public to receive far more information than they presently do from all government agencies, including the CIA. I believe in the application of moral and legal standards to national security decisions, including the limitation of covert operations to extraordinary circumstances involving the vital national interests of our country, with timely review by the appropriate Congressional Committees and written authorization by the President and his senior Cabinet officials.

There are those who disagree with these views and regard them as incompatible with the duties of a Director of Central Intelligence. Paying little heed to the fact that the Director's real responsibility is to provide leadership to the Intelligence Community and objective intelligence not policy to the President and his policymakers, these

critics prefer to view this post as part of the national security decision-making apparatus and prefer in that post someone with policy commitments more like their own.

Obviously I disagree with that view as well.

MEMORANDUM OF LEGAL ISSUES

From the founding of the Republic, as a matter of principle and uniform practice, White House papers have been treated as the personal property of the President and his aides, and have been removed from the White House upon their departure from office. The practice began when George Washington removed all of his papers, and was followed continuously thereafter. [National Study Commission on Records and Documents of Federal Officials, (Honorable Herbert Brownell, Chairman), Public Hearings Background Memorandum, page 60, et. seq.]

Congressional ratification of this practice was evidenced by repeated appropriations of public funds to buy Presidential papers from their heirs. For example, Congress appropriated funds to buy Presidential papers of Presidents Washington, Jefferson, Madison, Monroe, Jackson, Polk and Tyler. [Library of Congress, Congressional Research Service, "Ownership of Presidential Papers" (1974), pages 3-4.] The concept of private ownership of such papers also received judicial endorsement when Mr. Justice Story of the Supreme Court, sitting as a circuit judge, held that the papers of George Washington were private, not public, and subject to copyright protection. [Folsom v. Marsh, 9 Fed. Cas. 342 (No. 4901) (C.C.D. Mass. 184)]

Further Congressional acquiescence in the concept that such papers are private and not public is reflected in the Presidential Libraries Act of 1955, which directed the Administrator of General Services to

negotiate for and accept donations of Presidential historical materials. As the Library of Congress Research Service found in reviewing the legislative history of this Act: "In the hearings which led to the enactment of the Presidential Libraries Act in 1955, the Administrator of General Services testified that as a matter of ordinary practice, the President has removed his papers from the White House at the end of his term. This, he testified, was in keeping with the tradition and the fact that the papers are the personal property of the retiring Presidents. Accordingly, he indicated that the proposed legislation was not mandatory in nature and would not bind future Presidents. Rather, the decision to make the gift would continue to rest with the former President and his heirs. Testimony of Edward F. Measure, Administrator of General Services, in Hearing at 14-15." [Library of Congress, Congressional Research Service, op. cit., p

The private ownership concept and the practice of removing such papers upon termination of White House tenure, continued, without interruption, and was the universally accepted practice when President Kennedy entered the White House and Mr. Sorensen began his White House service. Indeed, as John Eisenhower recently stated, "The only material left by President Eisenhower for President Kennedy was a satchel containing a series of orders and instructions to be of assistance in the event of nuclear attack or national crisis."

This historical practice was summarized as follows in 1971 by Herman Kahn, the former Assistant Archivist of the United States in charge of Presidential Libraries: "Probably the best proof that the papers of the Presidents and their aides are not official records, is that there are not now nor have there ever been in the White House any files that pre-date those of the incumbency of the current President and his aides. Nor are there any such papers in the National Archives. Following their removal from the White House it has been the universal practice for Presidential aides either to keep in their own office or house the files created during their White House employment or to give them to an appropriate library or other depository."

Under governing law at the time of Mr. Sorensen's gift, it was totally lawful and appropriate that the donor take a tax deduction for the transfer of such documents. Numerous government officials over the years have taken such tax deductions, including Governor Adlai Stevenson, Arthur Schlesinger and J. Kenneth Galbraith. In Mr. Sorensen's case, his ownership of the documents in question was confirmed by the government archivist who originally requested the donation. The Internal Revenue Service, after full audit, approved of the deduction, and Mr. Sorensen's accountant settled with the Internal Revenue Service the valuation of the papers.

It was only after the events in question here that Congress changed the law to preclude such deductions. And it was not until

1974, ten years after the events in question here, that Congress made a limited change in past law and practice concerning ownership and removal of such papers by adopting the Presidential Recordings and Materials Preservation Act. However, that Act was limited solely to records and tapes created by the Nixon Administration -- and not any Administration prior or subsequent thereto.

To cite just a few of the precedents with respect to removal and donation of papers: Judge Samuel Rosenman, who served as Special Counsel to Presidents Roosevelt and Truman, removed and donated his papers to the Roosevelt and Truman libraries, as did Roosevelt aides Harry Hopkins and Louis Howe. Clark Clifford, President Truman's Special Counsel, took his papers, and donated them to the Truman Library. Sherman Adams, Eisenhower's Special Counsel, removed his files and donated them to the Dartmouth College Library. And Mr. Sorensen's colleagues, McGeorge Bundy, Robert McNamara, Dean Rusk, Douglas Dillon, Kenneth Galbraith and Arthur Schlesinger took their files and donated them to the Kennedy Library.

In almost every case, these papers included classified documents. For example, a brief review of the tables of contents attached to gifts of papers deposited in the Kennedy Library reveals that donations of papers by the following individuals included classified documents: McGeorge Bundy, National Security Adviser to the President; Robert McNamara, Secretary of Defense; Douglas Dillon, Secretary of the Treasury; Dean Rusk, Secretary of State; and Presidential Aides Arthur Schlesinger, J. Kenneth Galbraith, and Walter Heller.

No statute, rule or precedent precluded a government official from having reference to classified documents or information in writing books or memoirs. Indeed, since officials carry such information in their heads, they are always in a position to draw on it. The current attacks being made on Mr. Sorensen in this regard could as easily have been levelled against all of the other great memoir writers of recent history.

A quite recent example is President Ford. On November 21, 1973, in testimony before the House Judiciary Committee considering his confirmation as Vice President, President Ford said that in his book, Portrait of the Assassin, he drew upon highly classified papers of the Warren Commission and revealed information from at least two "Top Secret" documents. The Committee did not express concern as to the propriety of Mr. Ford having had such "Top Secret" papers in his possession while writing his book. (See transcript of the House Judiciary Committee hearings of that date.)

The only laws in effect, at the time Mr. Sorensen wrote his book, governing the use of classified information were the espionage statutes which prohibited: a) the use of national defense information with the intent of causing injury to the United States, or to confer an advantage on a foreign government (18 U.S.C. 8793, 794); b) the release of classified communications codes (18 U.S.C. 798); or c) the disclosure of classified security information to foreign governments (50 U.S.C. 8783).

It is not suggested by anyone that any of these provisions were violated. Nor has it ever been suggested, in the decade since Mr. Sorensen's book was published, that the book disclosed any classified security information. In fact, the relevant portions of the book were submitted in advance to McGeorge Bundy, National Security Adviser to the President, who confirmed that there were no inappropriate disclosures.

The only regulation governing the use and storage of classified information received by White House aides was Executive Order 10501, which provided that the custodian of classified information had responsibility for providing for its secure storage and handling, and for following procedures to insure that unauthorized persons not gain access. Whatever documents Mr. Sorensen required for his book were released to him by the custodian of his papers, the General Services Administration, and no suggestion has ever been made that he gave unauthorized persons access to them.

The General Services Administration acted in accordance with established practice in permitting Mr. Sorensen to use his papers at home. Indeed, government officials frequently work at home, and former officials and generals, drawing on their papers, have often written their memoirs at home or in their private offices.

CONCLUDING STATEMENT OF THEODORE C. SORENSEN

But it is now clear that a substantial portion of the United States Senate and the intelligence community is not yet ready to accept as Director of Central Intelligence an outsider who believes as I believe on these two legitimate questions. It is equally clear that to continue fighting for this post, which would be my natural inclination, would only handicap the new Administration if I am rejected, or handicap my effectiveness as Director if I am confirmed.

It is, therefore, with deep regret that I am asking Governor Carter to withdraw my designation as Director of Central Intelligence. My regret stems not from my failure to get this post but from my concern for the future of our country.

I return to private life with a clear conscience. When my nomination was announced on Christmas Eve, my youngest son said to me: "Now you will have to do some things you don't want to do"; and I replied: "I never will." I have never compromised my conscience, and I am unwilling to do so now in order to assure my nomination.

I want to thank you, Mr. Chairman and Members of the Committee, for hearing me out and for the courtesies you have extended to me over the past few weeks. I will be glad to answer any questions you think necessary, and to answer those of the press immediately after the conclusion of this hearing.

Portion of Sorensen Press Conference After Conclusion of Senate Hearings

Reporter's question was garbled...

Sorensen: "I would not want to characterize the intelligence community as a whole. The people with whom I have been working at the Agency have been extremely supportive of both my views and my qualifications."

Mr. Sorensen was asked if he withdrew his nomination "because of the oppositions' elements within the intelligence community...."

Sorensen: "No, I didn't say that, I didn't say that... First of all let me say that I have not condemned, and will not condemn the intelligence community as a whole. That's a grave mistake. I met out there some of the brightest and ablest and most dedicated people I have ever met anywhere in government. I work extremely well with them. I found them very much compatible with my views and attitudes on covert operations, on the role of intelligence in American society, on the kind of role America should play in world affairs..."